

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JASON HINTZE,

Plaintiff,

v.

STEVE SISOLAK, *et. al.*,

Defendants.

Case No. 3:22-CV-00436-MMD-CLB

**ORDER DENYING RENEWED MOTION
TO APPOINT GUARDIAN AD LITEM
AND/OR COUNSEL**

[ECF No. 44]

Before the Court is Plaintiff Jason Hintze's renewed motion for appointment of guardian *ad litem* and/or counsel. (ECF No. 44.) No response was filed. For the reasons discussed below, the renewed motion for appointment of guardian *ad litem* and/or counsel, (ECF No. 44), is denied.

Plaintiff previously filed two motions for appointment of guardian *ad litem* and/or counsel in this case, (ECF Nos. 1-2, 15), which were each denied, (ECF Nos. 6, 16.) Plaintiff again requests appointment of both a guardian *ad litem* and counsel. (ECF No. 44.) Each request is discussed in turn.

First, as to Plaintiff's request for appointment of a guardian *ad litem*, that request is denied. "The court must appoint a guardian *ad litem*—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c)(2). "Ordinarily, when a substantial question exists regarding the mental competence of a party proceeding pro se, the proper procedure is for the district court to conduct a hearing to determine competence, so a guardian *ad litem* can be appointed, if necessary." *Harris v. Mangum*, 863 F.3d 1133, 1138 (9th Cir. 2017) (internal quotation marks and citation omitted). However, "in the absence of verifiable evidence of incompetence, there is no substantial question regarding [a] [p]laintiff's competence and therefore no duty of inquiry." *Dillingham v. Emerson*, Case No. 1:18-cv-00507-AWI-SAB, 2020 WL 7050032, at *2 (E.D. Cal. June 12, 2020).

1 Here, Plaintiff has failed to raise a “substantial question” regarding his mental
2 competence. *Harris*, 863 F.3d at 1138. While Plaintiff states that his mental health
3 records necessitate a competency hearing, this is insufficient to satisfy his burden
4 because it does not suggest an “inability to comprehend or competently participate in
5 court proceedings.” *Kuzmicki v. Hanrahan*, Case No. 3:17-cv-00342-RCJ-CLB, 2018 WL
6 2088745, at *3 (D. Nev. May 4, 2018), adopted by 2018 WL 3577246 (D. Nev. July 25,
7 2018). Because Plaintiff has failed to raise a substantial question regarding his
8 competency, the Court need not conduct a hearing on the matter at this time and his
9 request is denied.

10 Next, moving to Plaintiff’s request for counsel, there is no constitutional right to
11 appointed counsel in a § 1983 action. *E.g., Rand v. Rowland*, 113 F.3d 1520, 1525 (9th
12 Cir. 1997), *opinion reinstated in pertinent part*, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en
13 banc). The provision in 28 U.S.C. §1915(e)(1) gives the court discretion to “request an
14 attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1); *see*,
15 *e.g., Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1998) (en banc.) While the
16 decision to request counsel lies within the discretion of the district court, the court may
17 exercise this discretion to request counsel only under “exceptional
18 circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

19 A finding of “exceptional circumstances” requires the court to evaluate (1) the
20 plaintiff’s likelihood of success on the merits and (2) the Plaintiff’s ability to articulate his
21 claims *pro se* considering the complexity of the legal issues involved.
22 *Id.* (quoting *Wilborn*, 789 F.2d at 1331) (internal quotation marks omitted). Neither factor
23 is dispositive, and both factors must be considered before a court decides. *Id.* The
24 difficulties every litigant faces when proceeding *pro se* does not qualify as an exceptional
25 circumstance. *Wood v. Housewright*, 900 F. 2d 1332, 1335-36 (9th Cir. 1990). While
26 almost any *pro se* litigant would benefit from the assistance of competent counsel, such
27 a benefit does not rise to the level of “exceptional circumstances.” *Rand*, 113 F.3d at
28 1525. Rather, the plaintiff must demonstrate that he is unable to articulate his claims due

1 to their complexity. *Id.*

2 Exceptional circumstances do not exist in this instance. First, Plaintiff makes no
3 argument as to the likelihood of success on the merits. As to the second prong, Plaintiff's
4 lack of legal knowledge and experience is unexceptional compared to most prisoner civil
5 rights cases. Plaintiff's claims related to mental health conditions do not create an
6 exceptional circumstance for the appointment of counsel. Many *pro se* litigants in civil
7 rights actions suffer from some sort of mental and/or physical condition. Plaintiff has not
8 pointed to any evidence or issues that make his conditions or difficulties any different from
9 the similar types of difficulties all litigants face when proceeding *pro se*. These issues do
10 not qualify as exceptional circumstances for purposes of appointing counsel. *Wood*, 900
11 F.2d 1332 at 1335-36.

12 Accordingly, Plaintiff's motion to appoint guardian *ad litem* and/or counsel, (ECF
13 No. 44), is **DENIED**.

14 Finally, briefing on the motion for summary judgment was stayed pending briefing
15 and resolution of the renewed motion to appoint guardian *ad litem* and/or counsel. (ECF
16 No. 45.) In light of this order, briefing shall resume. Plaintiff shall file a response to the
17 motion for summary judgment and motion to seal by no later than **May 16, 2024**. Any
18 reply shall be filed by no later than **May 30, 2024**.

19 **IT IS SO ORDERED.**

20 **DATED:** April 16, 2024

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24 **UNITED STATES MAGISTRATE JUDGE**